



Tim Burgess **Seattle City Councilmember**

Date: March 28, 2011

To: Seattle City Councilmembers

From: Councilmember Tim Burgess

Subject: **The Problem of Wage Theft**

In late 2009, my office received numerous reports about workers in low-wage industries in Seattle who had employers that intentionally withheld part or all of their wages, a phenomenon known as “wage theft.”

After my office conducted research into this issue, including meeting with community representatives and victims of wage theft, I discovered that wage theft is a much more prevalent problem than I expected. In fact, other state and local governments have developed or are in the process of developing a variety of responses to more aggressively respond to wage theft.

In Washington State, claims of wage theft are handled under the civil processes of the State Department of Labor and Industries. While many citations are issued for violations of state wage laws and regulations and 615 sustained claims sent to collections in fiscal year 2009, the department lacks sufficient resources to actively collect lost wages on behalf of victimized workers. If employers do not pay voluntarily, they often never pay. Improvements to state law and processes were adopted in 2010, but these changes, while certainly appropriate, have not changed the reality for many of the workers who are taken advantage of by their employer.

The problem of wage theft is significant enough to warrant enhanced City efforts to recover wages for these workers and to deter other employers from committing wage theft.

A first step is to modify our Seattle Municipal Code to more clearly define wage theft. The ordinance changes I am proposing would add the following elements to the Seattle Municipal Code (SMC):

- Under SMC 12A.08.060 (Theft), a new subsection (A4) clarifies that knowingly securing services for payment and intentionally avoiding full payment for these services is an element of the crime of theft, a gross misdemeanor.
- A list of specific circumstances is added to the SMC that may be considered in determining whether a defendant intended to commit wage theft. Similar lists of circumstances are used in the SMC sections for prostitution loitering

An equal opportunity employer

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(12A.10.010) and drug-traffic loitering (12A.20.050).

- An additional clarification is added to the SMC so that it is clear that wage theft can occur either at the place where the agreement for service was made or at the location where the services are performed, a change necessary to make the City law applicable in those cases where an offer of employment is made and accepted inside the city limits of Seattle yet the work is performed outside the City, or vice versa.
- Under SMC 5.55.230 (Business licenses), the City's Director of Finance and Administrative Services would be empowered to refuse to issue, revoke or refuse to renew a Seattle business license to individuals who
 - are convicted of wage theft under new section 12A.08.060A4, or
 - are subject to a final and binding citation and notice of assessment for wage violations from the State Department of Labor and Industries AND have not satisfied the judgment within 30 days, or
 - have been assessed civil liability by a court under Washington state wage laws in RCW 49.46, 49.48 or 49.52 AND have not satisfied the judgment within 30 days.

By encouraging greater compliance and leveling the playing field for all businesses and workers, a targeted campaign against wage theft will benefit everyone who does business fairly and honestly in Seattle.

This matter will be on the agenda of the Council's Public Safety and Education Committee on Thursday, March 31 at 10:30 a.m. This will be the Committee's first formal consideration of the legislation.

Please let me know if you have any questions about the proposed legislation. I would appreciate your support of these changes.

ORDINANCE _____

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3 AN ORDINANCE relating to wage theft; amending Seattle Municipal Code sections 5.55.230 and
4 12A.08.060; clarifying the definition of theft as it relates to theft of wages; providing a list of
5 circumstances that may be considered in determining whether a person intends to commit wage
6 theft; clarifying the City's jurisdiction in such cases; and allowing the City to refuse to issue,
7 revoke, or refuse to renew, business licenses from employers found guilty of wage theft.

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9 WHEREAS, research shows that the theft of wages by employers with unscrupulous business practices
10 is a significant problem around the country, with one 2008 study finding that more than two-
11 thirds of 4,387 workers surveyed experienced at least one pay-related violation in the previous
12 work week amounting to an average loss of 15 percent of weekly earnings; and

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14 WHEREAS, the Washington State Department of Labor and Industries issued 615 sustained civil claims
15 against such employers to collections in fiscal year 2009, but frequently lacks the resources to
16 collect upon these claims; and

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18 WHEREAS, some predatory business owners apparently consider repeated civil claims from the
19 Department of Labor and Industries a simple cost of doing business; and

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21 WHEREAS, encouraging greater compliance with wage laws benefits all workers by ensuring a level
22 playing field in the labor market; and

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24 WHEREAS, encouraging greater compliance with wage laws benefits the businesses that already
comply with these laws; and

WHEREAS, those individuals affected by wage theft are often among the most vulnerable in our city
and without access to sufficient resources and time with which to appeal for their unpaid wages;
and

WHEREAS, the City of Seattle finds it necessary and appropriate to create a stronger disincentive for
employers to violate wage and hour laws; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection A of Section 5.55.230 of the Seattle Municipal Code is amended as
follows:

5.55.230 Refusal to issue, revocation ~~Revocation~~ of, or refusal to renew business license.

1 A. The Director, or his or her designee, has the power and authority to refuse to issue, revoke or
2 refuse to renew any business license or amusement device license issued under the provisions of this
3 chapter. The Director, or his or her designee, shall notify such applicant or licensee in writing by
4 certified mail of the refusal to issue, revocation of, or refusal to renew, his or her license and on what
5 grounds such a decision was based. The Director may refuse to issue, revoke or refuse to renew any
6 license issued under this chapter on one or more of the following grounds:

- 7 1. The license was procured by fraud or false representation of fact.
- 8 2. The licensee has failed to comply with any provisions of this chapter.
- 9 3. The licensee has failed to comply with any provisions of SMC Chapters 5.32, 5.35, 5.37, 5.40,
10 5.45, 5.46, 5.48 or 5.52.
- 11 4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
- 12 5. The property at which the business is located has been determined by a court to be a chronic
13 nuisance property as provided in SMC Chapter 10.09.
- 14 6. The licensee has been convicted of theft under Section 12A.08.060A4 within the last ten
15 years.
- 16 7. The licensee is a person subject within the last ten years to a final and binding citation and
17 notice of assessment or court decision of liability for violations of RCW 49.46, 49.48 or 49.52, and the
18 decision or judgment was not satisfied within 30 days of its issuance.

19 The period of non-issuance, revocation or non-renewal shall be at least one year, and the licensee
20 or any person (as defined in SMC Section 5.30.040.F) in which the licensee is a principal shall not again
21 be licensed during such period.

22 B. Within 30 days from the date that the notice of refusal to issue, revocation or refusal to renew
23 notice was mailed to the applicant or licensee, the applicant or licensee may appeal such refusal to issue,
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1 revocation or refusal to renew by filing a written notice of appeal (“petition”) setting forth the grounds
2 therefor with the Office of the Hearing Examiner. The applicant or licensee must provide a copy of the
3 petition to the Director and the City Attorney on or before the date the petition is filed with the Hearing
4 Examiner. The hearing shall be conducted in accordance with the procedures for hearing contested
5 cases in the Seattle Administrative Code (Chapter 3.02 of the Seattle Municipal Code). The Hearing
6 Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of
7 the hearing. After the hearing thereon the Hearing Examiner shall, after making appropriate findings of
8 fact and conclusions of law, affirm, modify, or overrule the refusal to issue, revocation or refusal to
9 renew, and issue or reinstate the license. The Hearing Examiner may impose any terms upon the
10 issuance or continuance of the license that he or she may deem advisable. No refusal to issue,
11 revocation of, or refusal to renew a license issued pursuant to the provisions of this chapter shall take
12 effect until 30 days after the mailing of the notice thereof by the Director, and if appeal is taken as
13 herein prescribed, the refusal to issue, revocation or refusal to renew shall be stayed pending final action
14 by the Hearing Examiner. All licenses that are revoked or refused to be renewed by the Director shall be
15 surrendered to the City on the effective date of such revocation or refusal to renew. No business license
16 shall be renewed and no new license shall be issued to the licensee or to any person (as defined by SMC
17 Subsection 5.30.040F) in which the licensee is a principal for a period of one year where the license has
18 been revoked or not renewed by a decision of the Director pursuant to this Section. The decision of the
19 Hearing Examiner shall be final. The licensee and/or the Director may seek review of the decision of
20 the Hearing Examiner in the Superior Court of Washington in and for King County within fourteen (14)
21 days from the date of the decision.

22 * * *

23 Section 2. Section 12A.08.060 of the Seattle Municipal Code is amended as follows:
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12A.08.060 Theft.

1 A. A person is guilty of theft if:

2 1. He or she steals the property of another; or

3 2. By deception or by other means to avoid payment for services, he or she intentionally obtains
4 services which he or she knows to be available only for compensation; or

5 3. Having control over the disposition of services of others to which he or she is not entitled, he
6 or she knowingly diverts those services to his or her own benefit or to the benefit of another not entitled
7 thereto; or

8 4. He or she knowingly secures the performance of services by agreeing to provide
9 compensation and, after the services are rendered, fails to make full and complete payment, with intent
10 to avoid payment for services.

11 B. For purposes of subsection A4 of this section, among the circumstances that may be
12 considered in determining whether the person intends to avoid payment for services are that he or she:

13 1. agrees to pay the person providing the services immediately upon completion of the services,
14 but fails to do so; or

15 2. fails to pay the person at the time of an agreed-upon payday or at the end of the regular
16 payment interval required by state and federal statutes; or

17 3. agrees to pay the person providing the services at a specified time and place after completion
18 of the services, but fails to appear at that time or place; or

19 4. agrees to pay the person providing the services a specified amount upon completion of the
20 services, but pays or offers a lesser amount; or

21 5. pays the person providing the services with a check that is not honored by the bank or other
22 depository upon which it is drawn because of insufficient funds or a stop-payment order; or
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1 6. in retaliation for asserting any claim to wages, communicates to the person providing the
2 services, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee
3 that the person is not lawfully in the United States, or threatens, intimidates, or takes any other adverse
4 action against the person; or

5 7. fails to respond within fifteen days to any written communication that makes a demand for
6 unpaid wages from the person providing the services or any other person or entity writing on that
7 person's behalf.

8 Proof of any of these circumstances is not required for theft under subsection A4 of this section
9 nor do any of these circumstances conclusively prove theft under subsection A4 of this section.

10 C. In any prosecution under this section, it is an affirmative defense that the property or services
11 were openly obtained under a claim of title made in good faith, even though the claim be untenable.

12 D. Theft involving services may be deemed to have been committed either at the place where
13 the agreement was made regarding the services or at the place where the services were performed.

14 E. Within 14 days after the conviction of a person of theft under subsection A4 of this section,
15 the clerk of the court shall forward to the Director of the Department of Financial and Administrative
16 Services a docket of the case record.

17 Section 3. If any provision of this ordinance or its application to any person or circumstance is
18 held invalid, the remainder of the ordinance or the application of the provision to other persons or
19 circumstances is not affected.

20 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its
21 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
22 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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Passed by the City Council the ____ day of _____, 2011, and signed by me in open
1 session in authentication of its passage this ____ day of _____, 2011.

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President _____ of the City Council

4 Approved by me this ____ day of _____, 2011.

5 _____
6 Mike McGinn, Mayor

7 Filed by me this ____ day of _____, 2011.

8 _____
9 City Clerk

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